IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.08.2006

CORAM

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN

W.P.No.13996 of 1998 and
W.P.M.P.No.21251 of 1998

Velumani Minerals
rep. by its Managing Partner
K.T.Sampandan .. Petitioner

Versus

1. Government of Tamilnadu
   rep. by its Secretary,
   Industries Department,
   Fort St. George,
   Madras 9.

2. The Commissioner of Geology and
   Mining, Guindy, Madras 32.

3. The Collector,
   Dharmapuri District. .. Respondents

PRAYER: The Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of certiorari as stated therein.

For Petitioner : Mr.N.Mohanraj
For Respondents : Mr.Thirugnanam, SGP

ORDER

The prayer in the writ petition is for the issuance of a writ of certiorari to call for the records of the 1st respondent ending with the Order in G.O.3(D) NO.101 Industries (E2) department dated 20.07.1998 as confirming the order of the 2nd respondent in R.C.No.396/B1/89 dated 26.11.1990 and confirming the order of the 3rd respondent in R.C.284/88 (A.Mines) dated 14.12.1988 and quash the all orders.

2. The case of the petitioner is that the petitioner was granted lease to quarry grey granite. The respondent called upon the petitioner to pay local cess and local cess surcharge on seigniorage fee. The petitioner was also directed to pay the seigniorage fee for

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unauthorised quarrying granite to the dimension of 116.108 cubic meter. The seigniorage fee has been arrived at the rate of Rs.100 per cubic meter to Rs.11,610/- and penalty has been imposed in a sum of Rs.17,162/-. The correctness of that order is now canvassed before this court.

3. The learned counsel for the petitioner submitted that the issue of levy and collection of local cess and local cess surcharge on the minerals quarried has been settled by the Supreme Court and the respondents cannot claim the local cess and local cess surcharge on minerals subsequent to the date 4.4.91. That was the law laid down by the Supreme Court in the case of District Mining Officer and others vs. Tata Iron and Steel Co. And another (JT 2001(6) SC 183). Hence, there cannot be levy of local cess and local sess surcharge.

4. In respect of levy of seigniorage fee and penalty as aforesaid, learned counsel argued that levy is arbitrary and it is not based on materials.

5. I have heard the learned counsel for the petitioner as well as the learned Special Government Advocate and perused the material on record.

6. As rightly pointed out by the learned counsel for the petitioner, the levy and collection of local cess and local cess surcharge for minerals subsequent to the period of 4.4.91 cannot be legally sustainable in view of the law laid down by the Supreme Court in the above stated Judgment viz., in the case of District Mining Officer and others vs. Tata Iron and Steel Co. And another (JT 2001(6) SC 183). Hence, the demand of Local cess and Local cess surcharge after 4.4.91 has to be set aside. As far as the contention that the seigniorage fee and penalty imposed is concerned, I am not able to subscribe the argument of the learned counsel for the petitioner. All the three authorities down below who are empowered with the power to go into the merits and even causing verification and inspection of the quarry has concurrently found that there was illicit quarrying to an extent of 116.108 cubic meter of grey granite, which factum cannot be disputed by the petitioner. The one and only contention raised by the petitioner was that the mineral in 116.108 cubmit meter has been quarried under the cover of the interim order granted by this Court in W.P.No.6695 of 1988 and for that the petitioner cannot be penalised. But, the fact remains ultimately the writ petition has been dismissed. Any interim order passed would automatically merged with the final order. All the action carried out during the pendency of the writ petition, though under the cover of the interim order, on the dismissal of the writ petition would have become an illegal quarrying and for that they will have to pay the penalty as prescribed under the Act. The interim order granted pending disposal of the writ petition comes to end on the dismissal of the substantive proceedings in the

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writ petition and it is the duty of the Court to put the parties in the same position they would have been but for the interim order of the Court. Any other view would result in the act or order of the Court prejudicing the state for no fault of it and would also mean rewarding a petitioner inspite of his failure in the substantive case.

7. As the dimension of granite quarried by the petitioner has not been disputed by the petitioner and also in view of the fact that the writ petition No.6695 of 1988 filed by the petition for quarrying has also been dismissed, I do not find that the petitioner is entitled to the any relief. Hence, the writ petition is allowed to the extent that the demand of Local cess and local cess surcharge are quashed. In other aspects, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

rg

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary,
   Government of Tamilnadu
   Industries Department,
   Fort St. George,
   Madras 9.

2. The Commissioner of Geology and
   Mining, Guindy, Madras 32.

3. The Collector,
   Dharmapuri District.

1 CC TO V.G. MOHANRAJ, ADVOCATE SR NO 37240

1 CC TO GOVT. PLEADER, SR NO 37159

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VS(CO)

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